



ERNIE FLETCHER  
GOVERNOR

**FINANCE AND ADMINISTRATION CABINET**

P.O. BOX 3, 200 FAIR OAKS LANE  
FRANKFORT, KY 40602-0003  
(502) 564-6734  
FAX (502) 564-3788

ROBBIE RUDOLPH  
SECRETARY

In the matter of:

██████████ COMPANY

Contact: ██████████ CFO  
██████████ Company  
██████████

FINAL RULING NO.2004-05  
MARCH 24, 2004

Sales and use tax assessments for the periods  
January 1, 1998 through December 31, 2001

**FINAL RULING**

The Department of Revenue of the Finance and Administration Cabinet has outstanding sales and use tax assessments against the ██████████ Company for the periods January 1, 1998 through December 31, 2001. The following schedule reflects the total underpayment, including applicable interest accrued to date and the penalty and applicable fee for each period.

| Period                 | Tax           | Interest as of<br>03/18/04 | Penalty       | Fee           | Total per<br>Period |
|------------------------|---------------|----------------------------|---------------|---------------|---------------------|
| CYE 12/98              | \$ ██████████ | \$ ██████████              | \$ ██████████ | \$ ██████████ | \$ ██████████       |
| CYE 12/99              | \$ ██████████ | \$ ██████████              | \$ ██████████ | \$ ██████████ | \$ ██████████       |
| CYE 12/00              | \$ ██████████ | \$ ██████████              | \$ ██████████ | \$ ██████████ | \$ ██████████       |
| 01/01/01 –<br>11/30/01 | \$ ██████████ | \$ ██████████              | \$ ██████████ | \$ ██████████ | \$ ██████████       |
| 12/01/01 –<br>12/31/01 | \$ ██████████ | \$ ██████████              | \$ ██████████ | \$ ██████████ | \$ ██████████       |
| Totals                 | \$ ██████████ | \$ ██████████              | \$ ██████████ | \$ ██████████ | \$ ██████████       |

For the periods listed above, ██████████ Company underreported receipts from equipment rentals and equipment sales that are subject to sales tax by \$ ██████████. Amnesty fees were assessed in accordance with KRS 131.440(1)(b) because the assessments summarized above are for taxable periods that ended before December 1, 2001.

In a letter dated [REDACTED], 2003, [REDACTED] Company generally denied that additional sales tax was owed, but offered nothing in support of its position. The Department of Revenue has issued repeated requests that [REDACTED] Company provide information and documents that would permit the Department to evaluate the general denial contained in the initial protest. Peters Leasing has not responded to any of these requests for information and has, therefore, failed to remit a supporting statement as required by KRS 131.110(1).

At issue is whether [REDACTED] Company has complied with the requirements of KRS 131.110(1), which states in pertinent part:

The protest shall be accompanied by a supporting statement setting forth the grounds upon which the protest is made. Upon written request, the cabinet may extend the time for filing the supporting statement if it appears the delay is necessary and unavoidable.

In Eagle Machine Company, Inc. v. Commonwealth ex rel Gillis, Ky.App., 698 S.W.2d 528 (1985), the Kentucky Court of Appeals held, inter alia, that ". . . in a protest to a tax assessment, a taxpayer has an obligation to provide financial statements, records or some other documentation that would allow the Revenue Department some basis for reconsideration. In the instant case, despite requests for such information by the appellee, Eagle Machine failed to supply any significant documentation in support of its contention that the assessments were in error."

In Scotty's Construction Company, Inc. v. Commonwealth Of Kentucky Revenue Cabinet, Ky.App., 779 S.W. 234 (1989), the Court mentions, ". . . the circuit court which held that Scotty's failure to submit documentation as required by the statute before the issuance of the final ruling had the effect of failure to preserve appellant's right to review the assessment and on the strength of Eagle Machine set aside the Board's order and reinstated the determination of Revenue." The Court of Appeals then reaffirms its opinion in Eagle Machine by stating: "In a protest to a tax assessment, a taxpayer has an obligation to provide financial statements, records or some other documentation that would allow the Revenue Department some basis for reconsideration. In the instant case, despite requests for such information by the appellee, Eagle Machine failed to supply any significant documentation in support of its contention that the assessments were in error." The Court concludes by stating, ". . . the statute is mandatory in nature."

The Department of Revenue has granted [REDACTED] Company extensions in its letters dated [REDACTED], 2003, [REDACTED], 2003, and [REDACTED], 2003. However, [REDACTED] Company has failed to respond or submit any documentation that would allow the Department a basis for reconsideration of the sales and use tax underpayments identified above. By failing to submit a supporting statement, [REDACTED] Company has failed to protest the sales and use tax assessments summarized above. This is the final ruling of the Kentucky Revenue Cabinet, and its successor agency, the Finance and Administration Cabinet.

### APPEAL

You may appeal this ruling to the Kentucky Board of Tax Appeals pursuant to the provisions of KRS 131.110, KRS 131.340-131.365, 103 KAR 1:010 and 802 KAR 1:010. If you decide to appeal this ruling, you must file your complaint or petition of appeal with the Clerk, Kentucky Board of Tax Appeals, 128 Brighton Park Boulevard, Frankfort, Kentucky 40601, within thirty (30) days from the date of this letter. The rules of the Kentucky Board of Tax Appeals, which are set forth in 802 KAR 1:010, require that the complaint or petition of appeal must:

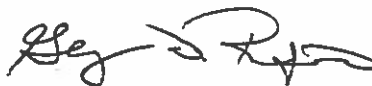
1. Be filed in quintuplicate;
2. Contain a brief statement of the law and facts in issue;
3. State the petitioner's position regarding the law, facts or both; and
4. Include a copy of this final ruling letter with each copy of the complaint or petition.

Proceedings before the Kentucky Board of Tax Appeals are conducted in accordance with 103 KAR 1:010, 802 KAR 1:010 and KRS 131.340-131.365 and KRS Chapter 13B. Formal hearings are held by the Board concerning the tax appeals before it, with all testimony and proceedings officially reported. Legal representation of parties to appeals before the Board is governed by the following rules set forth in Section 2 (3) of 802 KAR 1:010:

1. An individual may represent himself in hearings before the Board;
2. An individual who is not an attorney may not represent any other individual, corporation, trust, estate, or partnership before the Board; and
3. An attorney who is not licensed to practice in Kentucky may practice before the Board if he complies with Rule 3.030(2) of the Rules of the Kentucky Supreme Court.

You will be notified by the Clerk of the Board of the date and time set for any hearing.

Sincerely,  
FINANCE AND ADMINISTRATION CABINET



GEORGE D. RENFRO  
Assistant Director  
Division of Protest Resolution

CERTIFIED MAIL  
RETURN RECEIPT REQUESTED